Office-Supreme Court, U.S.
FILED
APR 30 1982
JOHN F. DAVIS, CLERK

No. 920

IN THE

Supreme Court of the United States

CITY CENTER MOTEL, INC.
Appellant,

versus

FLORIDA HOTEL AND RESTAURANT COMMISSION,

Appellee.

APPELLANT'S STATEMENT AS TO JURISDICTION

JOHN H. COTTEN
of
Cotten, Shivers, Gwynn & Daniel
Post Office Box 12
Tallahassee, Florida
Counsel for Appellant.

INDEX

STATEMENT AS TO JURISDICTION

	Page
Introductory Paragraph	1
Citation to Opinion Below	1-2
Jurisdiction	2
The Statute Involved	3
Question Presented	3
Statement of the Case	4-6
The Question Is Substantial	7-10

APPENDIX

Opinion, District Court of Appeal	ii-v
Order of Florida Hotel and Restaurant Commission	vi-ix
Order of Supreme Court of Florida denying Petition for Writ of Certiorari	x

TABLE OF CASES, TEXT BOOKS AND STATUTES CITED

	Page
Adams v. Miami Beach Hotel Association 77 So. 2d 465	6
City of Daytona Beach v. Abdo, Fla. App., 112 So. 2d 398, 118 So. 2d 540	8
City Center Motel, Inc. v. Florida Hotel and Restaurant Commission 134 So. 2d 856	1, 2, 4, 5
Fiske v. State of Kansas 274 U.S. 380, 47 S. Ct. 655	2
Myles Salt Co. v. Iberia & St. M. Drainage Dist. 239. U.S. 478, 36 S. Ct. 204	2
Section 509.201 (2)(a), Florida Statutes	2, 3, 4, 6, 8, 9, 10
Section 509.201 (2)(b), Florida Statutes	8, 9
Section 120.31, Florida Statutes	5
Title 28 United States Code Annotated Section 1257 (2)	2

IN THE

Supreme Court of the United States

CITY CENTER MOTEL, INC.

Appellant,

versus

FLORIDA HOTEL AND RESTAURANT COMMISSION,

Appellee.

STATEMENT AS TO JURISDICTION

I. INTRODUCTORY PARAGRAPH

Appellant submits the following statement of the basis on which it is contended the Supreme Court of the United States has jurisdiction to review, on appeal, the final judgment of the District Court of Appeal, First District, State of Florida.

II. CITATION TO OPINION BELOW

The opinion of the District Court of Appeal, First District, State of Florida is reported in 134 So.2d 856. A copy of the opinion is attached hereto as Appendix A.

The order of the appellee from which petition for certiorari was taken to said District Court of Appeal is unreported, but a copy of said order is attached hereto as Appendix B.

III. JURISDICTION

(a) The proceeding is an appeal from a final judgment of the said District Court of Appeal upholding the validity of Section 509.201 (2)(a) of the Florida Statutes as against the contention that said statute as construed was violative of the United States Constitution.

(b) The judgment of the District Court of Appeal, First District, State of Florida, was entered on November 21, 1961. Order denying petition for rehearing was entered on December 8, 1961. Notice of Appeal was filed with the District Court of Appeal, First District, State of Florida, on February 28, 1962.

(c) The jurisdiction of the Supreme Court of the United States to hear this appeal rests upon 28 USCA § 1257 (2). The judgment of the District Court of Appeal, First District, State of Florida, is the highest court of the state where decision could be had. Petition for Writ of Certiorari was made from the District Court of Appeal to the Supreme Court of Florida, but said petition was denied. A copy of said order denying same is attached hereto as Appendix C.

(d) The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on Appeal:

Myles Salt Co. v. Iberia & St. M. Drainage Dist. 239 U. S. 478, 36 S. Ct. 204

Fiske v. State of Kansas 274 U. S. 380, 47 S. Ct. 655

IV. THE STATUTE INVOLVED

The statute involved is Section 509.201 (2)(a), Florida Statutes, 1959, which reads as follows:

509.201 Room rates; posting in rooms; advertising; penalties. —

. . . . . .

(2)(a) "No person shall display or cause to be displayed any sign or signs which may be seen from a public highway or street, which sign or signs include in dollars and cents a statement relating to the rates charged at a public lodging establishment, unless such sign or signs include in letters and figures of similar size and prominence the following additional information: the number of apartments or rooms in the establishment and the rates charged for each; whether the rates quoted are for single or multiple occupancy where such fact affects the rate charged; and the dates during which such rates are in effect. The said rates posted in each room of the establishment and with those filed with the hotel and restaurant commissioner as required by subsection (1)."

V. QUESTION PRESENTED

The question presented by this appeal is whether it is a violation of the United States Constitution to require that if a person displays a sign showing rates charged in his public lodging establishment that said sign must also include in letters of the *same* or *equal size and prominence* the following additional information: the number of apartments or rooms in the establishment and the rates charged for each; whether the rates quoted are for single or multiple occupancy where such fact affects the rate charged; and the dates during which such rates are in effect.

VI. STATEMENT OF THE CASE

Appellant is the owner and operator of a motel and in order to advise the public of the accommodations it offers to the public it erected a sign on the motel premises. The sign as erected by appellant reads as follows: "$6 Couple; Single $5.00; 32 Units; Rates Same At All Times; Extra Person $1.00." Other information on the sign is not relevant to the issues herein. The figure "$6" is four feet in height and is forty-three feet from the ground. The letters in the word "Couple" are two feet-nine inches in height. The letters and figures in "Single $5.00" are nineteen inches in height and located thirty-five and one-half feet from the ground. The figures and letters in "32 Units"—Rates Same At All Times—Extra Person $1.00" are seven or nine inches in height and located twenty-six feet from the ground.

The Appellee, hereinafter sometimes referred to as the Commission, held a hearing on the charge that Appellant's sign was in violation of Section 509.201 (2)(a). At the close of the testimony before the Commission the Appellant orally moved the Commission to dismiss the charge on the ground that the statute as construed by the Commission is violative of the Federal Constitution. (TR 9-11) but the Commission refused to dismiss same (TR 11). The Commission ruled that the said statute required that all letters and figures on the sign relating to rates has to be the *same* size and prominence and proceeded to fine Appellant $500 and further ordered it to reconstruct its sign so that said letters and figures were the same size and prominence or its license would be suspended. The pertinent part of the Commission's order reads as follows:

> "IT IS THEREFORE ORDERED that City Center Motel, Inc. for the violation charged in Count 1

of the Notice be and it is hereby fined the sum of Five Hundred ($500.00) Dollars.

IT IS FURTHER ORDERED that City Center Motel, Inc. within ten (10) days from the date of this order reconstruct the sign or signs now appearing outside of and in front of the Motel so that the sign containing any words or figures showing the number of rooms in the licensed establishment and the rates charged for each, whether the rates quoted are for single or multiple occupancy, and the rates quoted are for single or multiple occupancy, and the dates during which such rates are in effect, shall be of the same size and prominence as the sign advertising $6 Couple.

IT IS FURTHER ORDERED that upon the failure to pay said fine and/or to reconstruct the sign or signs as above ordered, within ten (10) days from the date of this order, that the license heretofore issued to City Center Motel, Inc. be and the same is hereby suspended for six (6) months."

The Appellee Commission's order recited in effect that all of the letters and figures on the sign could be read from a distance of 200 feet (TR-2). The Commission's complaint against Appellant was that notwithstanding the fact that all the letters and figures could be read from a distance of 200 feet, that the sign was violative of the statutes because the letters and figures were not of the same size and prominence. (TR-3A)

Pursuant to Section 120.31, Florida Statutes 1961 and Rule 4.5 (c) of the Florida Appellate Rules the Appellant filed petition for writ of certiorari with the District Court of Appeal, First District, State of Florida, from the Order of the Commission.

On page 3 of Appellant's petition for writ of certiorari it stated: (TR-14)

> "Respondent has given an interpretation to Section 509.201 (2)(a) that would make the statute violative of the due process of law and equal protection clauses of the State of Florida and United States Constitutions."

In Appellant's brief filed with the District Court of Appeal, First District, State of Florida, one of its points was Point III (TR-14) which read:

> "Respondent Commission's interpretation of Section 509.201 (2)(a) would make the statute violative of the federal and state constitutions."

This point was argued not only in Appellant's brief, but also in its reply brief (TR 15-16) and in oral argument before the District Court of Appeal.

The District Court of Appeal, First District, State of Florida, in its opinion (TR-7) stated:

> "Petitioner further contends that to interpret and enforce the statute in the manner attempted by the Commissioner would stifle free competition, invade the free enterprise system and violate the rights guaranteed under the Constitutions. We are of the view that the constitutionality of a statute such as the one now under consideration has been laid to rest by the Supreme Court in the Adams case mentioned above."

Notice of Appeal from the judgment of the said District Court of Appeal to the Supreme Court of the United States was filed in said District Court of Appeal on February 28, 1962.

VII. THE QUESTION IS SUBSTANTIAL

The question presented is so substantial as to require plenary consideration with briefs on the merits and oral arguments for their resolution.

The substantial question involved is whether it is a violation of the United States Constitution to require that if a person displays a sign showing rates charged in his public lodging establishment that said sign must also include in letters and figures of *the same* or *equal* size and prominence the following additional information: the number of apartments or rooms in the establishment and the rates charged for each; whether the rates quoted are for single or multiple occupancy where such fact affects the rate charged; and the dates during which such rates are in effect.

The statute reads "similar" but the Commission has construed "similar" to mean "equal" or "the same" and the Commission's order has been upheld by the District Court of Appeal. Since the Supreme Court of the United States must accept the state's construction of a statute, the issue is whether the statute as construed is violative of the Fourteenth Amendment to the United States Constitution.

Is this requirement not a violation of the equal protection and due process of law clauses of the Fourteenth Amendment?

Can a person be deprived without compensation of valuable property rights: his right to advertise and his license to do business because the letters and figures on his outdoor sign are not of equal size and prominence?

There is no question of aesthetics as there was in City of Daytona Beach v. Abdo, Fla. App. 112 So. 2d 398, 118 So. 2d 540.

Does the statute requiring all the letters and figures to be the same have a real, substantial or rational relation to the public safety, health, morals or general welfare?

Does it bear a reasonable relation to the prevention of fraud? The appellee's witnesses admitted the sign told the whole story.

The section of the statute immediately following Section 509.201 (2)(a) is Section 509.201 (2)(b). It concerns publication of advertisements and reads as follows:

> (2)(b) "No person shall publish or cause to be published any advertisement other than those referred to in paragraph (a) hereof which includes in dollars and cents a statement relating to rates charged at a public lodging establishment unless such advertisement shall include in letters and figures immediately adjacent to said rate, whether the rates quoted are for single or multiple occupancy where such fact affects the rates charged. Said advertisement shall also include: the number of apartments or rooms in the establishment at the published rates, the dates during which such rates are in effect and an indication as to whether there are other rates in effect in said establishment. The said rate shall in each instance coincide with the rates posted in such rooms of the establishment and with those filed for these rooms with the Hotel and Restaurant Commission as required by subsection (1). With regard to the advertisements referred to in this paragraph the type size of the required additional information shall be at least one-twelfth of the size of the rate figures advertised or equal to the type size used in the body of the advertisement, whichever is larger."

Section 509.201 (2)(b) provides a 1 to 12 ratio requirement for the newspaper and magazine advertising.

Is there a reasonable basis—a substantial reason—for the requirements of 509.201 (2)(a), requiring all the letters and figures to be the same size? If prohibitions and regulations should be based on substantial reason to be constitutional, does not this statute fail for lack of substantial reason?

All the statutory information is on the sign and the Appellee's witnesses admitted the sign told "the whole story" and all the letters and figures on the sign could be read from a distance of 200 feet, although the largest letters and figures could be read as much as 1600 feet away.

If all the letters and figures can be read as far as 200 feet away and all the required statutory information is given and a travelling motorist can be fully informed before entering the motel, is it not arbitrary and unreasonable to require that all the letters and figures be the same size? A photograph of the sign is included in the transcript of record. (TR-20)

Said statute is a denial of equal protection of the law to the small operator whose budget is limited to advertising his rates on his sign in front of his motel and whose volume in his motel makes him unable to afford the various media of advertising in newspapers, magazines and brochures that are available to the chain and large operators who are not bound by the prohibitions of Section 509.201 (2)(a) because they do not have to use same to get their message across, but can afford to advertise pursuant to Section 509.201 (2)(b). There is no reasonable basis on which Section 509.201 (2)(a) should be allowed to stand. It is arbitrary and discriminatory.

We request the Honorable Court to take judicial notice that a sign has less advertising value when all the letters and figures on it are the same size. The sign maker who testified as an expert stated such a sign would have no advertising value and would be comparable to a newspaper without headlines or without lower captions; that it would be like a scientific paper where everything is the same height. The right of a person to advertise his motel on his own property is a valuable property right which the constitution forbids taking without due process of law. Does not a statute which arbitrarily strait-jackets a person's right to advertise destroy a person's most valuable property right without due process of law and violate his rights guaranteed by the United States Constitution?

We submit that Section 509.201 (2)(a) of the Florida Statutes arbitrarily deprives the Appellant of two most fundamental, natural, inherent and inalienable property rights without due process of law: The right to reasonably advertise its motel on its own property and its license to do business.

The questions involved here are so very substantial that we respectfully request this Honorable Court to take jurisdiction of this case.

Respectfully submitted,

John H. Cotten

JOHN H. COTTEN
of
COTTEN, SHIVERS, GWYNN & DANIEL
Post Office Box 12
Tallahassee, Florida
Counsel for Appellant.

Appendix A

Opinion filed November 21, 1961.

A Petition for Writ of Certiorari from the Florida Hotel and Restaurant Commission.

Cotten, Shivers, Gwynn & Daniel, for Petitioner.
Weldon G. Starry, for Respondent.
WIGGINTON, JUDGE

Petitioner seeks review by certiorari of an order entered by the State Hotel and Restaurant Commissioner finding it guilty of displaying a sign in front of its motel relating to rates charged for accommodations furnished therein contrary to the provisions of the statute applicable to matters of this kind.

The statute in question provides that "No person shall display or cause to be displayed any sign or signs which may be seen from a public highway or street, which sign or signs include in dollars and cents a statement relating to the rates charged at a public lodging establishment unless such sign or signs include in letters and figures of similar size and prominence the following additional information: the number of apartments or rooms in the establishment and the rates charged for each; whether the rates quoted are for single or multiple occupancy where such fact affects the rate charged; and the dates during which such rates are in effect. The said rates shall in each instance coincide with the rates posted in each room of the establishment and with those filed with the hotel and restaurant commissioner as required by subsection (1)".[1]

[1]Sec. 509.201 (2) (a), F.S.

One of the requirements set forth in the foregoing statute provides that signs displayed by operators of public lodging establishments which include in dollars and cents a statement relating to rates charged must also include other required information in letters and figures of similar size and prominence. An interpretation of the words "of similar size and prominence" is the crux of this review.

The evidence taken before the commissioner discloses without conflict that the sign forming the subject of the alleged violation contains the following words and figures "$6 Couple". The figure "$6" measures four feet in height and is located forty-three feet from the ground. The letters in the word "Couple" are two feet nine inches in height. The sign also contains the words and figures "Single $5", which are nineteen inches in height and located thirty-five and one-half feet from the ground. That portion of the sign which reads "32 units. Rates same at all times—extra person $1." is composed of letters and figures either seven or nine inches in height and located twenty-six feet from the ground. A motorist approaching the motel could read a portion but not all of the sign when he reaches a point 1600 feet away. Another portion of the sign may be read by an approaching motorist only when he reaches a distance of not more than 600 feet away. The remainder of the sign is readable only when the motorist reaches a distance not more than 200 feet away.

Based upon the foregoing evidence the Commissioner found that the words and figures appearing on the rate sign displayed by petitioner were in violation of the statute which requires that the rates and other information

be in words and figures of similar size and prominence.

It is petitioner's contention that since the sign complained of contains all the information required by the statute, that it fully complies with the spirit and intent thereof and cannot be held to constitute a violation. It bases this position upon the decision of the Supreme Court rendered in Adams.[2] The Adams decision construed the statute as it then existed and prior to the time it was amended in its present form. In all material respects as concerns the question now under consideration, the provisions of the two statutes are the same. The Adams decision merely held that the statute was not violative of any constitutional provision, and was a legitimate exercise of the police power by the State.

Appellant's contention ignores the fact that the violation of which it is found guilty does not concern a failure to include on the sign all the information required by the statute. The essence of the violation is the failure to so construct the sign as to make all figures and letters appearing thereon of similar size and prominence. It indeed taxes the credulity of this court to urge the contention that letters or figures four feet in height and erected forty-three feet from the ground are of similar size and prominence to other figures and letters seven or nine inches in height and erected twenty-six feet from the ground. This is especially so when the larger figures and letters are readable as far away as 1600 feet, while the small letters and figures are readable at a distance of not more than 200 feet from the sign.

---

[2]Adams v. Miami Beach Hotel Association, (Fla. 1955), 77 So. 2d 465.

To support petitioner's contention would require that the court ignore and read out of the statute the salutary provision which requires that all figures and letters appearing on rate signs in front of public lodging establishments shall be of similar size and prominence. It was the prerogative of the legislature to make such requirement, and the court would be guilty of invading the province of the legislature if it attempted to ignore it. In the performance of his duty to enforce the provisions of the statuate now under consideration, the Commissioner acts in a quasi-judicial capacity. His findings of fact are entitled to great weight and should not be reversed unless clearly erroneous, or unless there is no competent substantial evidence to support them.[3]

Petitioner further contends that to interpret and enforce the statute in the manner attempted by the Commissioner would stifle free competition, invade the free enterprise system and violate the rights guaranteed under the Constitutions. We are of the view that the constitutionality of a statute such as the one now under consideration has been laid to rest by the Supreme Court in the Adams case mentioned above.[4]

We have carefully considered the remaining assignments of error, but find them to be without merit.

Certiorari denied.

---

[3]United States Casualty Co. v. Maryland Casualty Co., (Fla. 1951), 55 So. 2d 741.

[4]See footnote 2.

CARROLL, DONALD, CHIEF JUDGE, and STURGIS, J., CONCUR.

Appendix B

BEFORE THE STATE HOTEL & RESTAURANT COMMISSION

IN RE: CITY CENTER MOTEL, INC.
2414 Kings Drive
Jacksonville, Florida

ORDER

Pursuant to proper notice, issued and served, a hearing was held before Robert A. Riedel, as State Hotel & Restaurant Commissioner, in the office of the Commissioner in the Carlton Building, Tallahassee, Florida, on July 25, 1961. The Commissioner was represented by Weldon G. Starry, special counsel, and City Center Motel, Inc. was represented by Douglas B. Shivers and Frank C. Vann.

It is the finding of the Commissioner, from the evidence and testimony presented at the hearing, that the alleged violations occurred on or about April 28, 1961; that notice of hearing and rule to show cause was issued on May 9, 1961 setting the matter for hearing on May 17, 1961; that said hearing was stayed by a temporary injunction issued out of the Circuit Court of Leon County, Florida; that an amended notice of hearing was issued on Juy 11, 1961 setting the matter for hearing on July 25, 1961.

I further find from the testimony and evidence presented at the hearing as follows:

1. *As to Count 4 of the Notice*: There was no evidence presented to show any overcharges by the Motel on April 26, 1961. Count 4 of the Notice is therefore dismissed.

2. *As to Count 2 of the Notice*: I find that on April 28, 1961 City Center Motel, Inc. did not maintain or make available for inspection by the Hotel & Restaurant Commission a register for the signature of guests as required by Section 509.101 (2) Florida Statutes, but I further find that on April 28th, 1961 a notice to correct this violation was issued by the Commission giving respondent five (5) days to correct this violation and that said correction was made within said five-day period and is now complying with the law, therefore, Count 2 of the Notice is dismissed.

3. *As to Count 3 of the Notice*: I find that on April 28, 1961 City Center Motel, Inc. did not have on file with the State Hotel & Restaurant Commission a schedule of rates of the rooms in the licensed premises as required by Section 509.201 (1) Florida Statutes, but I further find that on April 28th, 1961 a notice to correct this violation was issued by the Commission giving respondent five (5) days to correct this violation and that said correction was made within said five day period and is now in compliance with law, therefore, Count 3 of the Notice is hereby dismissed.

4. *As to Count 1 of the Notice*: I find that on April 26, 1961 and at the time of this hearing City Center Motel, Inc. failed to display or cause to be displayed a sign or signs which comply with the requirements of Section 509.201 (2)(a) in that there is on display in front of said Motel a sign which reads "$6 Couple"; that the $6 figure is four feet-three inches in height and is forty-three feet from the ground. The letters in the word couple are two feet-nine inches in height, the balance of the signs are not of similar size and prominence as the sign $6 Couple in that the sign which reads "Single $5" is only nineteen inches in height and is thirty-five and one-half feet from

the ground. The sign which reads "32 Units. Rates same at all times—extra person $1.00" has letters and figures nine and seven inches in height and is twenty-six feet from the ground; that the sign which reads "$6 Couple" is visible from an automobile travelling the highway approaching the Motel is visible and readable from a distance of 1600 feet, while the sign which reads "Single $5.00" is readable from a distance of 600 feet and "32 Units. Rates same at all times—extra person $1.00" is readable at a distance of 200 feet.

The Supreme Court has held many times that in statutory construction the words of a statute should be given their ordinary customary meaning.

Webster's International Dictionary defines "similar" as alike, akin, analogous and defines "prominence" as quality, state, or fact of being prominent, manifest, or conspicuous.

So, to give the words of the statute "of similar size and prominence" their ordinary customary meaning, means the signs should be of the same size, and equally conspicuous, prominent or visible.

To say that sign letters nineteen inches high which are ordinarily visible from an automobile travelling toward it at 600 feet are of similar size and prominence as sign letters four feet-three inches which are ordinarily visible under the same conditions a distance of 1600 feet; and to say that sign letters seven and nine inches which are ordinarily visible from an automobile for only 200 feet, is of similar size and prominence as sign letters four feet-three inches which are visible for 1600 feet, is a distortion of the English language.

I, therefore, find that the sign which was in existence in front of the Motel on or about April 26, 1961 and now existing in front of City Center Motel, Inc. and as charged in alleged violation No. 1, does not comply with the requirements of Section 509.201 (2)(a) and is in violation of that section of the statute.

IT IS THEREFORE ORDERED that City Center Motel, Inc. for the violation charged in Count 1 of the Notice, be and it is hereby fined the sum of Five Hundred ($500.00) Dollars.

IT IS FURTHER ORDERED that City Center Motel, Inc. within ten (10) days from the date of this order reconstruct the sign or signs now appearing outside of and in front of the Motel so that the sign containing any words or figures showing the number of rooms in the licensed establishment and the rates charged for each, whether the rates quoted are for single or multiple occupancy, and the rates quoted are for single or multiple occupancy, and the dates during which such rates are in effect, shall be of the same size and prominence as the sign advertising $6 Couple.

IT IS FURTHER ORDERED that upon the failure to pay said fine and/or to reconstruct the sign or signs as above ordered, within ten (10) days from the date of this order, that the license heretofore issued to City Center Motel, Inc. be and the same is hereby suspended for six (6) months.

DONE AND ORDERED at Tallahassee, Florida, this 26th day of July, A.D. 1961.

ROBERT A. RIEDEL,
State Hotel & Restaurant Commissioner.

Appendix C

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A.D. 1962

THURSDAY, FEBRUARY 1, 1962

CITY CENTER MOTEL, INC., **

Petitioner, **

vs. **

FLORIDA HOTEL AND RESTAURANT COMMISSION, **

Respondent. **

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari upon the transcript of record and briefs to review the order of the District Court of Appeal of Florida, First District, in said cause bearing date November 21, 1961, and the record having been inspected, it is ordered that said Petition be and the same is hereby denied.

A True Copy

TEST:

/s/ GUYTE P. MCCORD (Seal)
Clerk Supreme Court.

No. 920

Office-Supreme Court, U.S.
FILED
MAY 26 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

CITY CENTER MOTEL, INC.
Appellant,

versus

FLORIDA HOTEL AND RESTAURANT COMMISSION,

Appellee.

APPELLEE'S BRIEF IN SUPPORT OF MOTION TO DISMISS OR AFFIRM APPEAL

WELDON G. STARRY
406 Midyette-Moor Building
Tallahassee, Florida
Attorney for Appellee

INDEX

	Page
Introductory Statement	1
Jurisdiction	1
The Statute Involved	2
Question Presented	2
Statement of the Case	2-3
Argument	3-9
Conclusion	9

TABLE OF CASES, TEXT BOOKS AND STATUTES CITED

	Page
Adams v. Miami Beach Hotel Association 77 So. 2d 465	6
Bilby v. Stewart, Okl. 1918, 38 S. Ct. 264, 246 U. S. 255, 62 L. Ed. 701	5
Doremus v. Board of Education 342 U. S. 429, 72 S. Ct. 394, 96 L. Ed. 475	8
Flournoy v. Wiener, La. 1944, 64 S. Ct. 548, 321 U. S. 253, 88 L. Ed. 708	6
Herb v. Pitcairn, Ill. 1945, 65 S. Ct. 459, 324 U. S. 117, 89 L. Ed. 789	5
Herndon v. State of Georgia, 1935, 55 S. Ct. 794, 295 U. S. 441, 79 L. Ed. 1530	8
Municipal Securities Corp. v. Kansas City Mo., 1918, 38 S. Ct. 224, 246 U. S. 63, 62 L. Ed. 579	5
People ex rel Doyle v. Atwell, 1923, 43 S. Ct. 410, 261 U. S. 590, 67 L. Ed. 814	5
United States, et al v. Alaska S. S. Co., et al, 253 U. S. 113, 40 S. Ct. 448, 64 L. Ed. 808	8
United States v. Hastings, 1935, 56 S. Ct. 218, 296 U. S. 188, 80 L. Ed. 148	5
Section 509.201(2)(a) Florida Statutes	1, 2, 3
Title 28, United States Code Annotated Section 1257 (2) (3)	1, 6

IN THE

Supreme Court of the United States

CITY CENTER MOTEL, INC.

Appellant,

versus

FLORIDA HOTEL AND RESTAURANT COMMISSION,

Appellee.

APPELLEE'S BRIEF IN SUPPORT OF MOTION TO DISMISS OR AFFIRM APPEAL

I. INTRODUCTORY STATEMENT

The Appellant, Center City Motel, Inc., has taken an appeal to this Court from the Final Judgment of the District Court of Appeal, First District, State of Florida, reported in 134 So.2d 856, and has filed a Statement as to Jurisdiction. The Appellee has filed a Motion to Dismiss or Affirm the Appeal and files this Brief in support of the grounds as set forth in the Motion.

II. JURISDICTION

Appellant seeks to invoke the jurisdiction of this Court under 28 U.S.C.A., Section 1257 (2), on the grounds that Section 509.201 (2) (a), Florida Statutes, as construed by the District Court of Appeal, First District of Florida, from which decision Certiorari to the Supreme Court of Florida was denied, was violative of the United States Constitution.

III. THE STATUTE INVOLVED

The Statute involved is Section 509.201 (2) (a), Florida Statutes, which reads as follows:

509.201 Room rates; posting in rooms; advertising; penalties. –

. . . . . ;

(2) (a) "No person shall display or cause to be displayed any sign or signs which may be seen from a public highway or street, which sign or signs include in dollars and cents a statement relating to the rates charged at a public lodging establishment, unless such sign or signs include in letters and figures of similar size and prominence the following additional information: the number of apartments or rooms in the establishment and the rates charged for each; whether the rates quoted are for single or multiple occupancy where such fact affects the rate charged; and the dates during which such rates are in effect. The said rates posted in each room of the establishment and with those filed with the hotel and restaurant commissioner as required by subsection (1)."

IV. QUESTION PRESENTED

The Question Presented in Appellant's Statement as to Jurisdiction attempts to raise for the first time in this Court the question of whether the statute involved is in violation of the United States Constitution. Neither this question nor any other federal question was presented to nor decided by any of the state Courts below.

V. STATEMENT OF THE CASE

The decision of the Court below, set forth in its entirety beginning on page ii of the Appendix to Appellant's Statement as to Jurisdiction, contains a statement of the facts in the case and Appellant's contentions in the Court below. It may be summarized as follows:

Section 509.201 (2) (a), Florida Statutes, provides in substance that if the owner of a public lodging establishment under the jurisdiction of the Florida Hotel and Restaurant Commission displays a sign visible from a public street or highway, including in dollars and cents a statement relating to any rates charged, then he must include in letters and figures certain additional information on the sign in letters and figures of similar size and prominence. Appellant's sign contained a rate in letters and figures, together with the additional required information but the letters and figures varied from four feet in height located forty-three feet above the ground and readable 1,600 feet away to letters and figures seven or nine inches in height, located twenty-six feet from the ground and readable only 200 feet away. The Hotel Commissioner found that the sign displayed by the Appellant was in violation of the statute. Appellant filed petition for Writ of Certiorari from this decision to the District Court of Appeal contending that the sign contained all the information required by the statute and therefore it fully complied with the spirit and intent thereof and could not be held to constitute a violation of the statute. Appellant further contended that to interpret or construe the statute otherwise would be a violation of his constitutional rights. No question was raised as to the constitutionality of the statute per se.

Appellee has moved to dismiss or affirm the appeal on the following grounds.

VI. ARGUMENT

1.

THE DECISION OF THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA, IS BASED ON AN INDEPENDENT NONFEDERAL QUESTION.

The statute in question requires that if a sign includes in

dollars and cents a statement as to the rates charged at a public lodging establishment, it must then also contain certain other information in letters of similar size and prominence.

The facts as set forth in the decision of the District Court of Appeals, First District (Appendix A to Appellant's Statement of Jurisdiction) are not in controversy and reveal that the information in Appellant's sign required to be in letters and figures of similar size and prominence varied from letters and figures four feet in height located forty-three feet above ground to letters and figures seven to nine inches in height located twenty-six feet above ground.

Without passing on any federal question, the District Court of Appeal decision merely held that the letters and figures were not of similar size and prominence as required by the statute, saying:

> "An interpretation of the words 'of similar size and prominence' is the crux of this review.
>
> • • • • • •
>
> *** The essence of the violation is the failure to so construct the sign as to make all figures and letters appearing thereon of similar size and prominence. It indeed taxes the credulity of this court to urge the contention that letters or figures four feet in height and erected forty-three feet from the ground are of similar size and prominence to other figures and letters seven or nine inches in height and erected twenty-six feet from the ground. This is especially so when the larger figures and letters are readable as far away as 1600 feet, while the small letters and figures are readable at a distance of not more than 200 feet from the sign."

This Court will not take jurisdiction and review the decision of a State Court when the decision or judgment rested on an independent nonfederal ground. The Florida Court interpreted

the Florida Statute and said that such a variance in height of letters and their location was not in compliance with the Florida Statute requiring that they be of similar size and prominence.

On appeals from State Court judgments, where it appears that, notwithstanding a federal question, judgment rests on adequate nonfederal grounds and hence would not be affected on Supreme Court decision, appeal will be dismissed. *U. S. v. Hastings*, 1935, 56 S.Ct. 218, 296 U. S. 188, 80 L.Ed. 148. See, also *Herb v. Pitcairn, Ill.* 1945, 65 S.Ct. 459, 324 U. S. 117, 89 L.Ed. 789; People ex rel. *Doyle v. Atwell*, 1923, 43 S.Ct. 410, 261 U. S. 590, 67 L.Ed. 814; *Bilby v. Stewart, Okl.* 1918, 38 S.Ct. 264, 246 U. S. 255, 62 L.Ed. 701; *Municipal Securities Corp. v. Kansas City, Mo.* 1918, 38 S.Ct. 224, 246 U. S. 63, 62 L.Ed. 579.

2.

THE DECISION OF THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA, DID NOT DRAW IN QUESTION THE VALIDITY OF ANY STATE STATUTE ON THE GROUND OF ITS BEING REPUGNANT TO THE CONSTITUTION OF THE UNITED STATES.

Although the statute in question requires that if rates are displayed in a sign, the rates and certain other information must be in letters and figures of similar size and prominence, the Appellant's only real contention in the State Court was that his sign complied with the statute and to interpret the statute otherwise would violate his constitutional rights. Admitting that there was a very substantial variance in the size of the letters and figures, their location, and the distance from which they were readable, Appellant contended that since the sign contained all of the information required by the statute that it fully complied with the spirit and intent of the law and

to interpret the statute otherwise would violate his constitutional rights. The Appellant's contention and the decision of the State Court below did not draw in question the validity of the statute but rather was an interpretation of the state statute. This is obvious in the decision appealed from in which the District Court of Appeal said:

> "It is petitioner's contention that since the sign complained of contains all the information required by the statute, that it fully complies with the spirit and intent thereof and cannot be held to constitute a violation. It bases this position upon the decision of the Supreme Court rendered in Adams.[2] The Adams decision construed the statute as it then existed and prior to the time it was amended in its present form. In all material respects as concerns the question now under consideration, the provisions of the two statutes are the same. The Adams decision merely held that the statute was not violative of any constitutional provision, and was a legitimate exercise of the police power by the State.
>
> Appellant's contention ignores the fact that the violation of which it is found guilty does not concern a failure to include on the sign all the information required by the statute."

(Appellant's Appendix page iv)

Appeal or Certiorari to this Court will not lie from a decision or judgment of a State Court where the validity of the statute has not been drawn into question. 28 U.S.C.A., Section 1257 (2) (3); *Flournoy v. Wiener, La.* 1944, 64 S.Ct. 548, 321 U.S. 253, 88 L.Ed. 708.

3.

THERE IS NO FEDERAL QUESTION INVOLVED.

Appellant's Statement as to Jurisdiction shows on its face that

---

[2] Adams v. Miami Beach Hotel Association (Fla. 1955), 77 So.2d 465

no federal question was involved. The first time Appellant has ever attempted to raise a federal question was in his Statement as to Jurisdiction by his Question presented in which he says the statute per se is violative of the United States Constitution. It only contended that the failure of the Florida Court to construe the statute as it desired would violate its constitutional rights. In no Court below did Appellant raise the question of whether the statute per se violated either the Federal or State Constitutions. The Appellant could have and should have raised this question in the Court below. It is now precluded from doing so for the first time in this Court.

At most, the Appellant made a bare averment in the State Court that the Commission's interpretation of the statute would make it violative of the Federal and State Constitutions. This is confirmed by its Statement as to Jurisdiction on page 6 where Appellant says:

> "On page 3 of Appellant's petition for writ of certiorari it stated: (TR-14)
>
> 'Respondent has given an interpretation to Section 509.201 (2)(a) that would make the statute violative of the due process of law and equal protection clauses of the State of Florida and United States Constitutions.'
>
> In Appellant's brief filed with the District Court of Appeal, First District, State of Florida, one of its points was Point III (TR-14) which read:
>
> 'Respondent Commission's interpretation of Section 509.201 (2)(a) would make the statute violative of the federal and state constitutions.'"

The bare averment that such an interpretation of the statute violates Appellant's constitutional rights is not sufficiently definite to raise a federal question as regards the United States

Supreme Court's jurisdiction of an appeal. *Herndon v. State of Georgia*, 1935, 55 S.Ct. 794, 295 U.S. 441, 79 L.Ed. 1530.

4.

THE CAUSE IS MOOT.

On April 18, 1962, the Appellant, City Center Motel, Inc., fully complied with the Order of the Florida Hotel and Restaurant Commission and with the statute which he now contends is in violation of the United States Constitution.

In the case of *United States et al. v. Alaska S. S. Co., et al.*, 253 U.S. 113, 40 S.Ct. 448, 64 L.Ed. 808, this Court said:

> "• • • it is a settled principle in this court that it will determine only actual matters in controversy essential to the decision of the particular case before it. Where by an act of the parties, or a subsequent law, the existing controversy has come to an end, the case becomes moot and should be treated accordingly. However convenient it might be to have decided the question of the power of the Commission to require the carriers to comply with an order prescribing bills of lading, this court 'is not empowered to decide moot questions or abstract propositions, or to declare, for the government of future cases, principles or rules of law which cannot affect the result as to the thing in issue in the case before it.'"

As expressed more succinctly in the case of *Doremus v. Board of Education*, 342 U.S. 429, 72 S.Ct. 394, 96 L.Ed. 475:

> "• • • this Court does not sit to decide arguments after events have put them to rest."

The cause is moot and there is no justiciable case or controversy.

3.

QUESTION IS NOT SUBSTANTIAL

The only question raised in the State Court below was whether it would be a violation of Appellant's constitutional rights to interpret the statute to mean that Appellant's sign containing letters and figures varying in size from four feet in height located forty-three feet above ground to letters and figures seven to nine inches in height located twenty-six feet above ground was in violation of the statute when it contained all the information or "told the whole story" and therefore complied with the spirit and intent of the statute. The only thing substantial about this question is that the Supreme Court of the United States would then have the opportunity to tell more than 40,000 motels and hotels in Florida how much variance they could have in their letters and figures in a sign and still comply with the spirit and intent of the Florida statute requiring such information to appear in letters and figures of similar size and prominence.

CONCLUSION

For the foregoing reasons the Appeal should be dismissed or affirmed.

Respectfully submitted,

May 25, 1962

WELDON G. STARRY
406 Midyette-Moor Building
Tallahassee, Florida
Attorney for Appellee.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief in Support of Motion to Dismiss or Affirm Appeal has, pursuant to Rule 33 (1) of the Revised Rules of The Supreme Court of The United States, been served by mail upon John H. Cotten, of Cotten, Shivers, Gwynn & Daniel, Counsel for Appellant, Post Office Box 12, Tallahassee, Florida, this _____ day of May, A. D. 1962.

WELDON G. STARRY

LIBRARY
SUPR... U. S.

Office-Supreme Court, U.S.
FILED
MAY 26 196.
JOHN F. DAVIS, CLERK

No. 920

IN THE

Supreme Court of the United States

CITY CENTER MOTEL, INC.

Appellant,

versus

FLORIDA HOTEL AND RESTAURANT COMMISSION,

Appellee

MOTION TO DISMISS OR AFFIRM APPEAL

WELDON G. STARRY
406 Midyette-Moor Building
Tallahassee, Florida
Attorney for Appellee

IN THE

Supreme Court of the United States

CITY CENTER MOTEL, INC.,

Appellant,

versus

FLORIDA HOTEL AND RESTAURANT COMMISSION,

Appellee.

MOTION TO DISMISS OR AFFIRM APPEAL

Comes now the Florida Hotel and Restaurant Commission, the Appellee herein, by Weldon G. Starry its attorney, and moves this Court to dismiss with costs the appeal taken herein to this Court by City Center Motel, Inc., upon the following grounds:

1. The decision of the District Court of Appeal, First District, State of Florida, is based on an independent nonfederal question.

2. The decision of the District Court of Appeal, First District, State of Florida, did not draw in question the validity of any state statute on the ground of its being repugnant to the Constitution of the United States.

3. There is no federal question involved.

4. The cause has become moot in that the Appellant fully

complied with the Order of the Florida Hotel and Restaurant Commission on April 18, 1962, and the sign of the Appellant now complies with Section 509.201 (2) (a), Florida Statutes.

5. The question is not substantial and Appellee moves this Court to affirm on the ground that the decision on which the cause depends is so unsubstantial as not to need further argument.

Dated this 25th day of May, A. D., 1962.

WELDON G. STARRY
406 Midyette-Moor Building
Tallahassee, Florida
Attorney for Appellee.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss or Affirm Appeal, pursuant to Rule 33 (1) of the Revised Rules of The Supreme Court of The United States, has been served by mail upon John H. Cotten, of Cotten, Shivers, Gwynn & Daniel, Counsel for Appellant, Post Office Box 12, Tallahassee, Florida, this 25th day of May, A. D., 1962.

WELDON G. STARRY

Office Supreme Court, U.S.
FILED
JUN 15 1962
JOHN F. DAVIS, CLERK

No. 920

IN THE

Supreme Court of the United States

CITY CENTER MOTEL, INC.
Appellant,

versus

FLORIDA HOTEL AND RESTAURANT COMMISSION,
Appellee.

APPELLANT'S BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

JOHN H. COTTEN
of
Cotten, Shivers, Gwynn & Daniel
Post Office Box 12
Tallahassee, Florida
Counsel for Appellant.

INDEX

STATEMENT AS TO JURISDICTION

Introductory Paragraph	1
Argument	1-8
Conclusion	8
Certificate	9

TABLE OF CASES, TEXT BOOKS AND STATUTES CITED

	Page
Abie State Bank v. Bryan 51 S. Ct. 252, 282 U. S. 765	2
Bilby v. Stewart 38 S. Ct. 264, 246 U. S. 255	2
Doremus v. Board of Education 72 S. Ct. 394, 342 U. S. 429	8
Enterprise Tr. Dist. v. Farmers Mutual Canal Co. 37 S. Ct. 318, 243 U. S. 157	2
Herb v. Pitcairn 65 S. Ct. 459, 324 U. S. 117	3
Municipal Securities Corp. v. Kansas City, Mo. 38 S. Ct. 224, 246 U. S. 63	4
Myles Salt Co. v. Iberia & St. M. Drainage Dist. 36 S. Ct. 204, 239 U. S. 478	6
People ex rel Doyle v. Atwell 43 S. Ct. 410, 261 U. S. 590	4
Standard Oil Co. of Calif. v. Johnson 62 S. Ct. 1161, 316 U. S. 481	5
United States et al v. Alaska S. S. Co. et al 40 S. Ct. 448, 253 U. S. 113	7
United States v. Hastings 56 S. Ct. 218, 296 U. S. 188	2
Ward v. Krinsky 42 S. Ct. 529, 259 U. S. 503	6
Section 509.201 (2)(a) Florida Statutes	5
Title 18, United States Code Annotated, Section 682	3

IN THE

Supreme Court of the United States

CITY CENTER MOTEL, INC.

Appellant,

versus

FLORIDA HOTEL AND RESTAURANT COMMISSION,

Appellee.

APPELLANT'S BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

I. INTRODUCTORY PARAGRAPH

The Appellant CITY CENTER MOTEL, INC. has taken an appeal to this Court from the Final Judgment of the District Court of Appeal, First District, State of Florida, reported in 134 So. 2d 856, and has filed a Statement as to Jurisdiction. The Appellee has filed a Motion to Dismiss or Affirm the Appeal and a Brief in support thereof. The Appellant files this Brief opposing the Appellee's Motion to Dismiss or Affirm.

II. ARGUMENT

The Appellee's argument is divided into five parts. We would like to answer each part.

1. Appellee contends in its Motion to Dismiss or Affirm that the decision of the District Court of Appeal, First District, State of Florida, is based on an independent non-federal question.

The validity of the statute involved, as construed, goes to the foundation of the case. The Appellant was charged with violating the statute. If the statute as construed and applied violates the Appellant's organic rights guaranteed by the federal constitution, any other non-federal questions involved are not independent but are so interwoven as not to be independent.

In this regard, the Supreme Court has stated:

> "The Court has jurisdiction to review a decision of a state court based upon a Federal and a non-Federal ground where the non-federal ground is so interwoven with the other as not to be an independent matter . . . ."
>
> *Abie State Bank v. Bryan* 282 U. S. 765, 75 L. ed. 960, 51 S. Ct. 252
>
> *Enterprise Tr. Dist. v. Farmers Mut. Canal Co.* 243 U. S. 157, 61 L. ed. 644, 37 S. Ct. 318

Appellee cited *United States v. Hastings,* 56 S. Ct. 218, 296 U. S. 188, *Herb v. Pitcairn,* 65 S. Ct. 459, 324 U. S. 117, *People ex rel Doyle v. Atwell,* 43 S. Ct. 410, 261 U. S. 590, *Bilby v. Stewart,* 38 S. Ct. 264, 246 U. S. 255, and *Municipal Securities Corp. v. Kansas City, Mo.* 38 S. Ct. 224, 246 U. S. 63.

All of these cases are authority for the principle that, as Appellee stated on page 5 of its Brief, "where it appears that notwithstanding a federal question, judgment rests on adequate non-federal grounds, and hence would not be affected by Supreme Court decision Appeal will be dismissed."

We have no quarrel with that principle, but it has no application here.

If the Supreme Court finds that the Statute as construed and as applied by Appellee deprives the Appellant of basic, fundamental rights guaranteed by the Fourteenth Amendment to the Constitution, the decision of the lower Court would be required to be reversed.

In the case cited by Appellee, it made no difference about the federal ground, because the judgment of the lower Court could be upheld on a non-federal ground whether or not the federal ground was valid. That is not the case here.

The Appellee cites *U. S. v. Hastings*, 56 S. Ct. 218. This was a criminal case in a United States District Court. The District Court sustained a demurrer to an indictment and the United States appealed under 18 USCA §682. The District Court cited a number of grounds for sustaining the demurrer, only one of which found the statute involved unconstitutional. The Supreme Court of the United States held that the demurrer was sustained on a number of grounds, several of which were non-federal. In the Hastings case it would have made no sense for the Supreme Court to take jurisdiction, because the judgment of the lower Court would not be affected by the Supreme Court's decision.

In our case the judgment of the lower Court would be vitally affected by the Supreme Court's decision.

(b) Appellee cited *Herb v. Pitcairn*, 65 S. Ct. 459. In that case the Supreme Court of the United States remanded the case to the State Court so that it could advise if its decision were on state or federal grounds.

Here again, there is no similarity. If the statute involved in this appeal is held unconstitutional, the judgment against Appellant would fall

(c) In *People ex rel Doyle v. Atwell*, 43 S. Ct. 410, the State Court in a habeas corpus proceeding decided the federal question adversely to relators but also decided that habeas corpus was not the proper remedy. The Supreme Court of the United States declined to assume jurisdiction since the judgment was based on an independent ground, as well as a federal ground and the independent ground was broad enough to sustain the judgment.

Here again, there is no similarity. If the statute involved in our case were found by the Supreme Court to be unconstitutional as construed and applied by Appellee, the judgment of the lower Court would fall.

(d) The case of *Bilby v. Stewart*, 38 S. Ct. 264 cited by Appellee, involved the denial of probate of an alleged will of a full blood Creek Indian. The Supreme Court declined to review since the federal question was of no consequence as there was adequate non-federal ground to support the denial of probate (The lower Court found lack of testamentary capacity).

Here again, there is no similarity. The judgment of the lower Court could not stand in our appeal if the Supreme Court decides the federal ground in favor of the Appellant.

(e) In the case of *Municipal Securities Corp. v. Kansas City, Mo.*, 38 S. Ct. 224, cited by Appellee, the Supreme Court found that the lower Court based its decision on a ground of general law adequate to support its finding independent of the alleged violation of the Fourteenth Amendment.

Still no similarity. A finding that the statute in our case, as construed by the Appellee is unconstitutional would necessarily void the judgment of the lower Court.

If the Appellee's construction of the statute that the said letters and figures must be the *same* size and of *equal* prominence (even though the letters and figures can all be read as far as 200 feet away and the sign tells "the whole story") and the Appellee's order that the Appellant be deprived of its valuable license to do business, are found to be violative of Appellant's rights guaranteed by the Fourteenth Amendment, the judgment of the lower Court would fall.

2. Appellee contends the decision of the lower Court did not draw in question the validity of any state statute on the ground if its being repugnant to the constitution of the United States.

Appellant's contention throughout has been that Section 509.201 (2)(a), of the Florida Statutes, as construed by the Appellant, violates the Appellant's rights guaranteed by the federal constitution.

Appellee's position is that "The Appellant's contention and the decision of the State Court below did not draw in question the validity of the statute, but rather was an interpretation of the state statute."

Appellee's position is not in harmony with the decisions of this Court.

In *Standard Oil Co. of Calif. v. Johnson* 62 S. Ct. 1161. 316 U. S. 481 the Supreme Court held that where the validity of Gen. Laws Calif. 1937 Acts 2964 Section 10 *as construed by the California Courts*, was drawn in question on ground of its being repugnant to the federal constitution, the judgment of the California Court was properly before the United States Supreme Court.

In *Ward v. Krinsky*, 42 S. Ct. 529, 259 U. S. 503, the Supreme Court concluded that although the U. S. Supreme Court is bound by the construction of a state statute by the state court of last resort it is not concluded by its reasoning but must exercise an independent judgment when called upon to determine the federal question whether the act *as construed and applied* is repugnant to the restrictions of the Federal constitution.

In *Myles Salt Co. v. Iberia & St. M. Drainage Dist.* 239 U. S. 478 the Court stated:

> "Although the state law as written is not attacked a Federal question exists where such law as administered and justiled by the state supreme court is attacked."

3. Appellee contends there is no federal question involved. Appellee argues in its brief that it was imperative that Appellant contend throughout that the statute *per se* is violative of the United States Constitution.

Appellant has contended from the outset and at every step and stage of the proceedings that the statute as construed by the Appellee is violative of Appellant's rights guaranteed it by the United States Constitution:

(a) At the close of the testimony before the commissioner, Appellant moved to dismiss the charge on the ground that the statute as construed by the Commission (now the Appellee) is violative of the Federal Constitution. (TR 9-11).

(b) In Appellant's petition for writ of certiorari (TR 14).

(c) In Appellant's brief to the District Court of Appeal (TR 14-15).

(d) In oral argument before the District Court of Appeal.

The cases hereinabove cited are authority for the proposition that a federal question is present when contention is made that the statute as construed violates the Appellant's rights guaranteed by the United State Constitution.

4. Appellee contends the cause is moot because the Appellant has complied with the order of the commission.

The cause is not moot.

The only reason Appellant paid the fine of $500 imposed by Appellee and altered its sign, is because this Honorable Court refused to grant Appellant's Motion for supersedeas.

Appellant had to comply or else its valuable license to do business would have been suspended by Appellee when the order was entered denying Appellant's Motion for supersedeas.

The issue in the case is very much alive and if Appellant wins, it wants a refund from Appellee and will reerect its sign.

The two cases cited by Appellees are certainly not authority for an argument that cause here is moot.

In *United States et al v. Alaska S. S. Co. et al* 253 U. S. 113, 40 S. Ct. 448 the question involving an appeal from order enjoining enforcement of order of Interstate Commerce Commission prescribing the terms of carrier's bill of lading, became moot where it was conceded the new Transportation Act of 1928 requires changes in the forms prescribed.

Doremus v. Board of Education 342 U. S. 429, 72 S. Ct. 394, was a suit against Board of Education for judgment declaring invalid a New Jersey statute providing for reading of Old Testament at opening of each public school day. Supreme Court held no controversy as child graduated prior to taking appeal.

5. Appellant contends the question is not substantial.

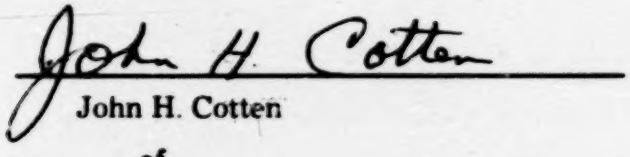
Appellant has covered this point in its Statement as to Jurisdiction, and sets forth there the substantiality of the question.

CONCLUSION

For the foregoing reasons, the Appellee's Motion to Dismiss or Affirm should be denied.

June 13, 1962

Respectfully submitted,



John H. Cotten

of

COTTEN, SHIVERS, GWYNN & DANIEL

Post Office Box 12

Tallahassee, Florida

Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Appellant's Brief in Opposition to Appellee's Motion to Dismiss or Affirm, has been served by mail upon Weldon G. Starry, Counsel for Appellee, 406 Midyette-Moor Building, Tallahassee, Florida, this 13 day of June, A. D. 1962.

John H. Cotten

JOHN H. COTTEN